

PREGERSON, Circuit Judge, dissenting.

DEC 29 2003

CATHY A. CATTERSON

U.S. COURT OF APPEALS

Reyes, born in Mexico, has such limited proficiency in English that he required bilingual counsel in the state trial court proceedings. Upon his arrest, Reyes cooperated with the arresting officer and voluntarily admitted that he had tried to take the driver's license test for Soto, who knew how to drive but did not know how to read.

When Reyes pled not guilty and went to trial, he apparently believed that he would not be found guilty of perjury because, when he tried to take the driver's license test for his cousin and when he spoke with the arresting officer, he did not understand what "perjury" meant. At the trial, Reyes' counsel called as a witness a certified Spanish language court interpreter who testified that the translated Spanish version of the driver's license application that Reyes signed as "Miguel Soto" did not state anywhere the Spanish equivalent of "I have read and understood the above."

The prosecutor offered Reyes a deal of four years imprisonment in exchange for a guilty plea to the perjury charge, and the trial court indicated that, even if he went to trial and was convicted, it would consider striking one of Reyes' prior

strikes and sentence him to only eight years imprisonment.¹ Apparently believing that, if he were convicted, his likely sentence would be either four or eight years imprisonment – not 26 years to life – Reyes maintained his not-guilty plea and opted for a jury trial.

The jury convicted Reyes of perjury and found his prior strikes to be true. The trial court refused to strike Reyes' 1981 prior and sentenced him to 26 years to life – not 4 years, not 8 years – severely punishing him for exercising his constitutional right to a jury trial. Because I believe that punishing a person for exercising his or her constitutional rights clearly violates due process, I dissent.

¹ At a pretrial hearing on Reyes' motion for appointment of new counsel (which was denied), the trial court stated,

Your attorney filed a motion to have the Court consider striking one of the priors, specifically, the 1981 burglary. I don't normally commit or make a decision until after someone has been convicted. I think it is premature to do that. However, in your case, I looked at your attorney's papers, I looked at the district attorney's papers, and I indicated to your attorney that should you be convicted of the perjury charge and the priors were found true that I would certainly consider striking the older prior, the '81 prior, for some legal reasons because of the age of the prior and other factors that your attorney and the district attorney have disclosed to me.

If I did that, that would be after you are convicted or after you plead guilty. The Court could put you then in prison for eight years. The only commitment I made is that I would certainly consider the low term doubled, which would be four [years].

